

AMENDED IN SENATE MARCH 28, 2006

**SENATE BILL**

**No. 1666**

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**Introduced by Senator Bowen**

February 24, 2006

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An act to amend ~~Section 1798.80~~ *Sections 1798.80 and 1798.84* of, and to add Section 1798.83.5 to, the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1666, as amended, Bowen. Personal information: ~~obtaining information by fraudulent, deceptive, or false means. prohibited practices.~~

Existing law requires a business to ensure the privacy of a customer's personal information, as defined, contained in records, as defined, by destroying, or arranging for the destruction of, the records. Existing law requires, subject to certain exceptions, a business that discloses a customer's personal information, including information relating to income or purchases, to a 3rd party for direct marketing purposes to provide the customer, within 30 days after the customer's request, as specified, in writing or by e-mail the names and addresses of the recipients of that information and specified details regarding the information disclosed, except as specified. Existing law requires a person or business that owns or licenses computerized data that include personal information to disclose any breach of the security of its system, as specified. Existing law requires a business, other than specified entities, that own or license personal information about a California resident to implement and maintain reasonable security procedures and practices to protect personal information from unauthorized access, destruction, use, modification, or disclosure. Any

customer injured by a business' violation of these provisions is entitled to recover damages, a civil penalty, attorney's fees, injunctive relief, and other remedies.

This bill would include a telephone calling pattern record or list, as defined, in the definition of "personal information" for purposes of the above-described provisions. The bill would *also* prohibit any person, as defined, from ~~knowingly procuring, attempting to procure, soliciting, or conspiring with another person to procure, personal information of a customer that is a resident of this state, except as authorized by the above-described provisions, or by any fraudulent, deceptive, or false means to procure personal information of a customer. The bill would prohibit a person from knowingly selling, attempting to sell, offering to sell, or conspiring to sell personal information of a customer that is a resident of this state, except as authorized by the above-described provisions. The bill would prohibit a person from receiving a record containing personal information of a customer that is a resident of this state, knowing that the record has been obtained in violation of the above-described provisions or that was obtained by fraudulent, deceptive, or false means. The bill would authorize a business from which a record containing personal information has been unlawfully acquired to bring an action seeking any equitable relief, including disgorgement of any unlawful monetary or other gain, that the court deems appropriate, and for reasonable attorney's fees and costs of suit , among other things, obtaining or attempting to obtain, or causing or attempting to cause the disclosure of, personal information about a customer or employee of a business through specified methods, such as by making false, fictitious, or fraudulent statements or representations, with specified exceptions. The bill would provide civil remedies for the violation thereof, and would make related and conforming changes in that regard.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1798.80 of the Civil Code is amended
- 2 to read:
- 3 1798.80. The following definitions apply to this title:
- 4 (a) "Business" means a sole proprietorship, partnership,
- 5 corporation, association, or other group, however organized and

1 whether or not organized to operate at a profit, including a  
2 financial institution organized, chartered, or holding a license or  
3 authorization certificate under the law of this state, any other  
4 state, the United States, or of any other country, or the parent or  
5 the subsidiary of a financial institution. The term includes an  
6 entity that destroys records.

7 (b) “Customer” means an individual who provides personal  
8 information to a business for the purpose of purchasing or leasing  
9 a product or obtaining a service from the business.

10 (c) “Individual” means a natural person.

11 (d) “Person” means an individual, business association,  
12 partnership, limited partnership, corporation, limited liability  
13 company, trust, estate, cooperative association or other entity.

14 (e) “Personal information” means any information that  
15 identifies, relates to, describes, or is capable of being associated  
16 with, a particular individual, including, but not limited to, his or  
17 her name, signature, social security number, physical  
18 characteristics or description, address, telephone number,  
19 telephone calling pattern record or list, passport number, driver’s  
20 license or state identification card number, insurance policy  
21 number, education, employment, employment history, bank  
22 account number, credit card number, debit card number, or any  
23 other financial information.

24 ~~(f) “Procure” means to obtain by any means, whether~~  
25 ~~electronically, in writing, or in oral form, with or without~~  
26 ~~consideration.~~

27 ~~(g)~~

28 (f) “Records” means any material, regardless of the physical  
29 form, on which information is recorded or preserved by any  
30 means, including in written or spoken words, graphically  
31 depicted, printed, or electromagnetically transmitted. “Records”  
32 does not include publicly available directories containing  
33 information an individual has voluntarily consented to have  
34 publicly disseminated or listed, such as name, address, or  
35 telephone number.

36 ~~(h) “Telephone calling pattern record or list” means any~~  
37 ~~document or record, including electronic records, of the~~  
38 ~~telephone or other access numbers called by any other person, or~~  
39 ~~received by any other person utilizing services provided by a~~  
40 ~~telephone corporation, as defined in Section 234 of the Public~~

1 ~~Utilities Code, a provider of voice communication over the~~  
2 ~~Internet utilizing voice over Internet protocol, a provider of voice~~  
3 ~~communication to end users over a mobile satellite service~~  
4 ~~involving the provision of commercial mobile radio service,~~  
5 ~~pursuant to Parts 20 and 25, Title 47 of the Code of Federal~~  
6 ~~Regulations, or a provider of mobile telephony services, as~~  
7 ~~defined in Section 2890.2 of the Public Utilities Code.~~

8 SEC. 2. Section 1798.83.5 is added to the Civil Code, to read:

9 1798.83.5. (a) No person shall:

10 (1) Knowingly procure, attempt to procure, solicit, or conspire  
11 with another person to procure, personal information of a  
12 customer that is a resident of this state, except as authorized by  
13 this title, or by any fraudulent, deceptive, or false means procure  
14 personal information of a customer.

15 (2) Knowingly sell, attempt to sell, offer to sell, or conspire to  
16 sell personal information of a customer that is a resident of this  
17 state, except as authorized by this title.

18 (3) Receive a record containing personal information of a  
19 customer that is a resident of this state, knowing that the record  
20 has been obtained in violation of this title or was obtained by  
21 fraudulent, deceptive, or false means.

22 (b) Any personal information that is obtained in violation of  
23 subdivision (a) shall be inadmissible as evidence in any judicial,  
24 administrative, legislative, or other proceeding except when that  
25 information is offered as proof in an action for violation of this  
26 title.

27 (c) A business from which a record containing personal  
28 information has been unlawfully acquired in violation of  
29 subdivision (a), may seek both of the following:

30 (1) Reasonable attorney's fees and costs of suit.

31 (2) Any equitable relief, including disgorgement of any  
32 unlawful monetary or other gain, that the court deems  
33 appropriate.

34 (d) (1) Nothing in this section prohibits the Attorney General,  
35 any district attorney, or any assistant, deputy, or investigator of  
36 the Attorney General or any district attorney, any officer of the  
37 California Highway Patrol, any chief of police, assistant chief of  
38 police, or police officer of a city, county, or city and county, any  
39 sheriff, undersheriff, or deputy sheriff regularly employed and  
40 paid in that capacity by a county, or any person acting pursuant

1 to the direction of one of these law enforcement officers acting  
2 within the scope of his or her authority, from obtaining a record  
3 that contains personal information, in connection with the  
4 performance of the official duties of the law enforcement agency.

5 (2) Nothing in this section prohibits any person from obtaining  
6 a record containing personal information pursuant to a lawfully  
7 issued and noticed subpoena or court order.

8 (3) Nothing in this section prohibits any business, or officer,  
9 agent, or employee of a business, from obtaining a record  
10 containing personal information in the course of testing the  
11 security procedures or systems of the business or otherwise in  
12 furtherance of maintaining the confidentiality of customer  
13 personal information.

14 (4) Nothing in this section prohibits any business, or officer,  
15 agent, or employee of a business, from obtaining a record  
16 containing personal information in the course of investigating  
17 allegations of misconduct or negligence on the part of the  
18 business, an agent, or employee of the business, in maintaining  
19 the confidentiality of customer personal information.

20 (5) Nothing in this section prohibits any business, or officer,  
21 agent, or employee of a business, from obtaining a record  
22 containing personal information in the course of recovering any  
23 record containing personal information obtained in violation of  
24 subdivision (a).

25 (e) The civil rights and remedies provided by this section are  
26 in addition to, and not exclusive of, any civil rights and remedies  
27 otherwise available to any person.

28 SEC. 2. Section 1798.83.5 is added to the Civil Code, to read:

29 1798.83.5. (a) No person shall obtain or attempt to obtain, or  
30 cause to be disclosed or attempt to cause to be disclosed,  
31 personal information about a customer or employee of a business  
32 using any of the following methods:

33 (1) By making a false, fictitious, or fraudulent statement or  
34 representation to an officer, employee, or agent of a business.

35 (2) By making a false, fictitious, or fraudulent statement or  
36 representation to a customer of a business.

37 (3) By providing any document to an officer, employee, or  
38 agent of a business, knowing that the document is forged,  
39 counterfeit, lost, or stolen, was fraudulently obtained, or contains  
40 a false, fictitious, or fraudulent statement or representation.

1 (b) No person shall request a person to obtain personal  
2 information about a customer or employee of a business,  
3 knowing that the person will obtain, or attempt to obtain, the  
4 information in any manner described in subdivision (a).

5 (c) No provision of this section shall be construed to prevent  
6 any action by a law enforcement agency, or any officer,  
7 employee, or agent of that agency, to obtain personal  
8 information about a customer or employee of a business, as  
9 permitted by law in connection with the performance of the  
10 official duties of the agency.

11 (d) No provision of this section shall be construed to prevent  
12 any business, or any officer, employee, or agent of that business,  
13 from obtaining personal information about a customer or  
14 employee of the business, in the course of any of the following:

15 (1) Testing the security procedures or systems of the business,  
16 for maintaining the confidentiality of personal information about  
17 a customer or employee.

18 (2) Investigating allegations of misconduct or negligence on  
19 the part of any officer, employee, or agent of the business.

20 (3) Recovering personal information about a customer or  
21 employee of the business, which was obtained or received by  
22 another person in any manner described in subdivision (a) or (b).

23 (e) Any personal information that is obtained in violation of  
24 subdivision (a) or (b) shall be inadmissible as evidence in any  
25 judicial, administrative, legislative, or other proceeding, except  
26 when that information is offered as proof in an action for a  
27 violation of this title.

28 (f) No provision of this section shall be construed to prevent  
29 any person from obtaining personal information pursuant to a  
30 lawfully issued and noticed subpoena or court order.

31 (g) The rights and remedies of a customer or employee for a  
32 violation of this section are the remedies provided in Section  
33 1798.84.

34 SEC. 3. Section 1798.84 of the Civil Code is amended to  
35 read:

36 1798.84. (a) Any waiver of a provision of this title is  
37 contrary to public policy and is void and unenforceable.

38 (b) Any customer injured by a violation of this title may  
39 institute a civil action to recover damages.

1 (c) In addition, for a willful, intentional, or reckless violation  
2 of Section 1798.83 *or* 1798.83.5, a customer may recover a civil  
3 penalty not to exceed three thousand dollars (\$3,000) per  
4 violation; otherwise, the customer may recover a civil penalty of  
5 up to five hundred dollars (\$500) per violation for a violation of  
6 Section 1798.83 *or* 1798.83.5.

7 (d) Unless the violation is willful, intentional, or reckless, a  
8 business that is alleged to have not provided all the information  
9 required by subdivision (a) of Section 1798.83, to have provided  
10 inaccurate information, failed to provide any of the information  
11 required by subdivision (a) of Section 1798.83, or failed to  
12 provide information in the time period required by subdivision  
13 (b) of Section 1798.83, may assert as a complete defense in any  
14 action in law or equity that it thereafter provided regarding the  
15 information that was alleged to be untimely, all the information,  
16 or accurate information, to all customers who were provided  
17 incomplete or inaccurate information, respectively, within 90  
18 days of the date the business knew that it had failed to provide  
19 the information, timely information, all the information, or the  
20 accurate information, respectively.

21 (e) Any business that violates, proposes to violate, or has  
22 violated this title may be enjoined.

23 (f) A prevailing plaintiff in any action commenced under  
24 Section 1798.83 *or* 1798.83.5 shall also be entitled to recover his  
25 or her reasonable attorney's fees and costs.

26 (g) The rights and remedies available under this section are  
27 cumulative to each other and to any other rights and remedies  
28 available under law.

29 (h) *The term "customer," as used in this section, with respect*  
30 *to a violation of Section 1798.83.5 only, includes a customer or*  
31 *employee of a business.*